

1 5335 A  
RECORDATION NO. \_\_\_\_\_ Filed 1428

CRAVATH, SWAINE & MOORE OCT 19 1987-3 15 PM

ONE CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

INTERSTATE COMMERCE COMMISSION

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RECORDATION NO. 1 5335 B Filed 1428

No. 7-292A010

Date OCT 19 1987

Fee \$ 20.00

RECORDATION NO. 1 5335 C Filed 1428

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INTERSTATE COMMERCE COMMISSION

20.00 filing fee

October 19 1987

ICC OFFICE OF  
THE SECRETARY  
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INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 1 5335 C Filed 1428

OCT 19 1987-3 15 PM

INTERSTATE COMMERCE COMMISSION

Consolidated Rail Corporation

Lease Financing Dated as of October 1, 1987

Conditional Sale Indebtedness Due January 2, 2002

Dear Ms. McGee:

Pursuant to 49 U.S.C. § 11303 and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Consolidated Rail Corporation, for filing and recordation, counterparts of each of the following documents:

1. (a) Conditional Sale Agreement dated as of October 1, 1987, among Consolidated Rail Corporation, Thrall Car Manufacturing Company and Trinity Industries, Inc., as Builders, and Whirlpool Acceptance Corporation, as Vendee; and

- A (b) Agreement and Assignment dated as of October 1, 1987, among Consolidated Rail Corporation, Thrall Car Manufacturing Company and Trinity Industries, Inc., as Builders, and Mercantile-Safe Deposit and Trust Company, as Agent.

- B 2. (a) Lease of Railroad Equipment dated as of October 1, 1987, between Consolidated Rail Corporation, as Lessee, and Whirlpool Acceptance Corporation, as Vendee; and

- C (b) Assignment of Lease and Agreement dated as of October 1, 1987, between Whirlpool Acceptance

Countersigned \_\_\_\_\_ J. J. Jacoby



Corporation, as Vendee, and Mercantile-Safe Deposit and Trust Company, as Agent.

The names and addresses of the parties to the aforementioned agreements are as follows:

1. Agent:

Mercantile-Safe Deposit and Trust Company  
Two Hopkins Plaza  
Baltimore, Maryland 21203

2. Vendee:

Whirlpool Acceptance Corporation  
17177 N. Laurel Park Drive  
Livonia, Michigan 48152

3. Builders-Vendors:

Consolidated Rail Corporation  
1310 Six Penn Center Plaza  
Philadelphia, Pennsylvania 19103

Thrall Car Manufacturing Company  
26th and State Streets  
Chicago, Illinois 60411

Trinity Industries, Inc.,  
2525 Stemmons Freeway  
Dallas, Texas 75207

4. Lessee:

Consolidated Rail Corporation  
1310 Six Penn Center Plaza  
Philadelphia, Pennsylvania 19104

Please file and record the documents referred to in this letter and index them under the names of the Agent, the Vendee the Builders-Vendors and the Lessee.

The equipment covered by the aforementioned documents is listed on Exhibit A attached hereto.

The equipment bears the legend "Ownership Subject to Documents Filed with The Interstate Commerce Commission".



There is also enclosed a check for \$20 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document), and the Lease of Railroad Equipment and related Assignment of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments and this transmittal letter for your files. It is requested that the remaining counterparts of the documents be delivered to the bearer of this letter.

Very truly yours,

*Laurance V. Goodrich /aws*

Laurance V. Goodrich  
as Agent for Consolidated Rail  
Corporation

Noreta R. McGee, Secretary,  
Interstate Commerce Commission,  
Washington, D. C. 20423

Encls.



## ANNEX B

to

## Conditional Sale Agreement

<u>Builder*</u>	<u>Type</u>	<u>Builder's Specifi- cations</u>	<u>Plant</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>		<u>Base Price per Unit</u>	<u>Total</u>	<u>Place of Delivery</u>
Thrall Car Manufac- turing Company	Bi-Level enclosed auto racks	FA	Chicago Heights, Illinois	100	CR 6000-6099**		\$25,860	\$ 2,586,000	Winder, Georgia
Thrall Car Manufac- turing Company	Tri-Level enclosed auto racks	FA	Chicago Heights, Illinois	150	CR 3900-3999 CR 5001-5050		33,830	5,074,500	Winder, Georgia
Trinity Industries Inc.	Tri-Level enclosed auto racks	FA	Greenville, PA	150	CR 3750-3899		33,068	4,960,200	F.O.B. Greenville, PA
								<u>\$12,620,700</u>	

\* To the extent Consolidated Rail Corporation ("Conrail") purchases units of Equipment from the other Builders before the first Closing Date, Conrail will be the Builder hereunder as to all such units and will sell such units hereunder at the same price it paid for them.

\*\* The first 18 cars are numbered CR 2100 to 2117 and such numbers will eventually be changed to CR 6000 to 6017. This Agreement covers the cars under both sets of numbers.





Interstate Commerce Commission  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

10/19/87

Laurance V. Goodrich  
Cravath, Swaine & Moore  
One Chase Manhattan Plaza  
New York, N.Y. 10005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/19/87 at 3:15pm, and assigned recordation number(s). 15335, 15335-A, 15335-B & 15335-C

Sincerely yours,

*Norata R. McGee*  
Secretary

Enclosure(s)

SE-30  
(7/79)



1 5335/B  
RECORDATION NO. \_\_\_\_\_ Filed 1426

[P72030]

OCT 19 1987 -3 15 PM

INTERSTATE COMMERCE COMMISSION

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[CS&M Ref. 1240-200]

LEASE OF RAILROAD EQUIPMENT

Dated as of October 1, 1987

between

CONSOLIDATED RAIL CORPORATION

and

WHIRLPOOL ACCEPTANCE CORPORATION

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2008

OFFICE OF THE ATTORNEY GENERAL

STATE OF TEXAS

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SCHEDULE C Certificate of Acceptance

SCHEDULE D Basic Rent

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1/ This Table of Contents has been included in this document for convenience only and does not form a part of or affect any construction or interpretation of this document.

LEASE OF RAILROAD EQUIPMENT dated as of October 1, 1987, between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation ("Lessee"), and WHIRLPOOL ACCEPTANCE CORPORATION, a Delaware corporation ("Lessor").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with Consolidated Rail Corporation (in such capacity "Builder"), Thrall Car Manufacturing Company and Trinity Industries, Inc. (severally "Builder" and collectively "Builders") wherein the Builders have agreed to, conditionally sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto ("Equipment"); and

WHEREAS each Builder under an Agreement and Assignment dated as of the date hereof ("CSA Assignment") is assigning its interests in the CSA to Mercantile-Safe Deposit and Trust Company, acting as Agent (hereinafter, together with its successors and assigns, called "Vendor") under a Participation Agreement dated as of the date hereof ("Participation Agreement") with the Lessee, the Lessor, the Vendor and a certain institutional investor (hereinafter called, together with its successors and assigns, "Investors"); and

WHEREAS the Lessee desires to lease such number of units of Equipment as are delivered and accepted and settled for under the CSA ("Units") at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS the Lessee has secured all necessary approvals from Trailer Train Company regarding the application of the Equipment to Trailer Train Company's flatcars;

WHEREAS the parties contemplate that the Lessor will assign certain of its rights in this Lease to the Vendor by an Assignment of Lease and Agreement dated as of the date hereof ("Lease Assignment"), and the Lessee will consent thereto by a Consent and Agreement ("Consent");

WHEREAS capitalized terms not defined herein are used as defined in the CSA;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor



hereby leases the Units to the Lessee upon the following terms and conditions:

SECTION 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent or additional rent or setoff against or recoupment or reduction of rent or additional rent, including, but not limited to, abatements, setoffs, reductions or recoupments due or alleged to be due by reason of any past, present or future claims or counterclaims of the Lessee against the Lessor under this Lease or the CSA, or against the Builders or the Vendor or otherwise; provided, however, that nothing in this Section 1 shall be deemed to impair the Lessee's right to assert and sue upon such claims in separate actions. The Lessee's obligations hereunder, including its obligations to pay all rentals, additional rentals and other amounts hereunder, shall be absolute and unconditional under any and all circumstances, and, except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. So long as no Event of Default, or event which with the lapse of time or the giving of notice, or both, would constitute an Event of Default, exists hereunder, if the Lessor or anyone claiming through the Lessor shall interfere with the Lessee's right to possession and use of any Unit in accordance with the terms of this Lease as a result of any tax, claim, lien, charge or security interest that the Lessor is obligated to provide the funds to discharge pursuant to Article 12 of the CSA, the Lessee's obligation to pay rent (other than the portion thereof required as specified in the last proviso to this sentence) with respect to such Unit hereunder shall abate for so long as such



interference continues; provided, however, that an authorized officer of the Lessee shall have given 10 days' prior written notice thereof to the Lessor in sufficient detail to identify such Unit and the source, nature and location of such interference, it being understood that such prior notice is of the essence of this Lease and that an abatement of rent by the Lessee without such prior notice will constitute an Event of Default under Section 10(A) after five business days'; and provided further, however, that such abatement of rent shall be limited solely to that portion of the rent which is not necessary to pay the principal of and interest on the CSA Indebtedness when due and payable under the CSA. If the Lessee abates the rent under the next preceding sentence when it is not authorized to do so thereunder, the Lessee agrees to pay to the Lessor the amount of such abatement together with interest thereon at the Penalty Rate (as defined in § 16). To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof.

SECTION 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the CSA. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same and, if such Unit is found to be acceptable, to accept delivery of such Unit, and the Lessee shall timely execute and deliver to the Lessor a certificate of acceptance ("Certificate of Acceptance") in the form annexed hereto as Schedule C, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any Unit of Equipment after December 30, 1987, shall be null and void and ineffective to subject such Unit to this Lease or to constitute acceptance thereof on behalf of the Lessor for any purpose whatsoever. The Lessee will give at least five business days' prior written notice to the Lessor and the Vendor of the First Delivery Date (as defined in the Participation Agreement) and of each Closing Date with the appropriate Builder under the CSA.

SECTION 3. Rentals. (a) Basic Rent. The Lessee agrees to pay to the Lessor, as basic rental (the "Basic Rent") for each Unit during the Basic Term, 29 consecutive semi-annual payments commencing July 2, 1988 (each such semi-annual date being hereinafter called a "Basic Rental Payment Date"). The Basic Rent payable on each Basic Rental Payment Date for each Unit shall be in accordance with Schedule D hereto. In addition, as interim rent the Lessee agrees to pay the Lessor on January 2, 1988, an amount equal to the amount required by clause (b) of the second paragraph of Paragraph 9 of the Participation Agreement.

(b) Adjustment of Basic Rent and Casualty Values. With respect to any Unit, Basic Rent and the Casualty Values have been calculated on the assumptions set forth in Schedule E hereto.

If for any reason such assumptions are not correct, then the Basic Rent and the Casualty Values payable by the Lessee hereunder in respect of the Units shall be increased or decreased, as the case may be, by such amount as shall cause the Lessor's Net Economic Return (as defined in Section 22(c) hereof to be the same as if such assumptions had been correct. Notwithstanding anything to the contrary contained herein, in no event shall the Basic Rent or the Casualty Values hereunder be less than an amount that would be sufficient to pay the principal of (including Casualty Values under the CSA) and interest on the CSA Indebtedness when due under the CSA. The Lessor shall provide a schedule of such rentals and Casualty Values to the Lessee promptly after such calculations have been made by the Lessor. The Lessee may, at its sole cost and expense, seek verification of the Lessor's calculation of such proposed adjustments from a financial lease intermediary such as D'Accord Financial Services, Inc.

If any of the Rental Payment Dates is not a business day, the rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, Baltimore, Maryland, Detroit, Michigan, or Philadelphia, Pennsylvania are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee, until all amounts due under the CSA have been fully satisfied and discharged, to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this Section 3 and in Section 7 hereof, but excluding all payments not assigned to the Vendor pursuant to the Lease Assignment, at the principal office of the Vendor, for

the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor then due and payable under the CSA, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Federal or other funds immediately available to the Vendor or other appropriate recipient by 12:00 noon, Baltimore time, on the date such payment is due.

SECTION 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of Sections 7 and 10 hereof, shall terminate on January 2, 2003 ("Base Term"). The obligations of the Lessee hereunder (including, but not limited to, the obligations under Sections 3, 6, 7, 9, 14 and 22 hereof) shall survive the expiration or termination of the term of this Lease and the full payment of all amounts payable under this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination), all as provided therein; provided, however, that, so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled (without regard to acts of misappropriation by its own employees) to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under Section 12 hereof.

SECTION 5. Identification Marks. The Lessee will cause each Unit to be numbered with the identification number set forth in Schedule A hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership subject to Documents filed with the Interstate Commerce Commission", with appropriate changes thereof as from time to time may be

required by law or required in the opinion of the Vendor and the Lessor, in order to protect the Lessor's title and the Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect that such statement has been so filed and deposited, and that no other filing, deposit or giving of notice with or to any Federal, District of Columbia, state or local government or agency thereof is necessary to protect the rights of the Vendor and the Lessor in such Units.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

SECTION 6. General Tax Indemnity. (a) Indemnity. The Lessee agrees to pay, and to indemnify and hold harmless the Lessor, the Vendor and the Investors and their successors and assigns agents and servants ("Indemnified Persons") on an after-tax basis, from all license and registration fees and all taxes, assessments, fees, withholdings and charges together with any penalties, fines, additions to tax or interest thereon, however imposed, whether levied or imposed upon any Indemnified Person by any Federal, state, District of Columbia or local government or governmental subdivision in the United States of America or by any foreign country or subdivision or taxing authority thereof, upon or with respect to, any Unit; the purchase, sale, storage, ownership, delivery, leasing, re-leasing, subleasing, possession, use, operation, location, maintenance, repair, condition, transfer of title, return or other disposition thereof; the indebtedness with respect thereto; the rentals, receipts or earnings arising therefrom; or this Lease, the CSA, the Lease Assignment, the

Consent, the CSA Assignment or the Participation Agreement or any document referred to herein or therein or any of the transactions contemplated hereby or thereby (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed hereafter referred to as "Taxes"); excluding, however: (i) United States Federal income taxes, (ii) any net income taxes or other similar taxes measured by net income or net earnings imposed by any state or the District of Columbia or any local subdivision of any thereof in which any Indemnified Person maintains its principal place of business or is otherwise subject to income or franchise taxation by reason of other transactions, (iii) any claim for penalties, fines or interest resulting from an act, omission or misrepresentation of such Indemnified Person or anyone acting under, through, or on behalf of such Indemnified Person (other than the Lessee pursuant to this Section 6), and (iv) any Taxes imposed upon the Lessor or Vendor as a result of the voluntary transfer of title, sale, or other disposition of the Units other than as a result of the exercise of any remedies pursuant to Section 10 hereof or by reason of the operation of the provisions of Section 7 hereof. Clause (ii) above shall not be read as any waiver of any right of action the Lessee may have in respect of any such act, omission or misrepresentation of such Indemnified Person or anyone acting under, through, or on behalf of such Indemnified Person.

(b) Payment. All amounts payable to any Indemnified Person pursuant to this Section 6 shall be paid promptly in immediately available funds and in any event within 15 days after receipt by the Lessee of written demand therefor from such Indemnified Person requesting reimbursement or indemnification for any Taxes, on the basis that such Indemnified Person has paid or within 15 days expects to pay such amounts.

(c) Contest. If any proceeding (including the written claim or written threat of such proceeding) is commenced against an Indemnified Person for any Taxes, such Indemnified Person shall promptly after obtaining knowledge thereof notify the Lessee. Each Indemnified Person will confer with the Lessee, if so requested, and will take such action in connection with contesting any such proceeding as the Lessee shall reasonably request; provided, however, that:

(i) within 30 days after notice by such Indemnified Person to the Lessee of such proceeding the Lessee shall request that it be contested;

(ii) such Indemnified Person, at its sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with any applicable agency with respect to any such claim, accept the findings of such agency or otherwise terminate any audit or other administrative proceedings and may, at its sole option, either pay the Taxes and sue for a refund in such court as such Indemnified Person shall elect, or contest the proceeding in any appropriate forum; provided, however, that the Lessee shall have no obligation to indemnify such Indemnified Person for any such Taxes, if as a result of such Indemnified Person's foregoing of any such administrative appeals, proceedings, hearings or conferences, such Indemnified Person shall lose the right to contest the merits of such imposition or levies; and

(iii) prior to taking such action, the Lessee at its expense shall furnish such Indemnified Person in a timely manner with an opinion of independent tax counsel satisfactory to such Indemnified Person to the effect that there exists a substantial likelihood of such Indemnified Person's prevailing on the merits in the contest of such proceeding; it being understood, however, that in no event shall such Indemnified Person be required to commence any proceeding pursuant to this paragraph (c) unless the Lessee shall have provided such Indemnified Person with sufficient funds on an interest-free basis to pay such Taxes as are required to be paid so to proceed.

(d) Costs of Contest. The Lessee shall indemnify such Indemnified Person in a manner satisfactory to such Indemnified Person for any liability or loss which such Indemnified Person may incur from time to time as a result of participating in any proceeding described in paragraph (c) of this Section 6. The indemnification shall be an amount which, on an after-tax basis, shall be equal to all costs and expenses which the Indemnified Person may incur from time to time in connection with any such proceeding or any appeal thereof, including, without limitation, reasonable attorneys' and accountants' fees and disbursements, and the amount of any interest, tax or penalty which may ultimately be due and payable as a result of any such proceeding. Such amounts shall be payable within 15 days after the presentation to the Lessee of appropriate documentation in reasonable detail of such costs, expenses, interest, taxes, or penalties and the demand for payment thereof.

(e) Refund. So long as no Event of Default shall have occurred and be continuing, if an Indemnified Person shall obtain a refund of all or any part of such Taxes paid by the Lessee or with the Lessee's advance of funds, such Indemnified Person shall pay to the Lessee the amount of such refund, subject to the Lessee making the indemnification in paragraph (d) of this Section 6. If in addition to such a refund the Indemnified Person shall receive an amount representing interest on the amount of such refund, the Lessee shall be paid that proportion of such interest which is fairly attributable to Taxes paid by the Lessee prior to the receipt of such refund or with an advance provided by the Lessee.

(f) Reports. In case any report or return is required to be made relating to any Taxes, the Lessee will, at its own expense, make and timely file such reports and returns where permitted to do so under applicable rules and regulations (the interest of each Indemnified Person in the Units to be shown in a manner satisfactory to such Indemnified Person) or, where not so permitted, notify such Indemnified Person of such requirement and at the Lessee's expense prepare and deliver such reports to such Indemnified Person within a reasonable time prior to the time such reports are to be filed. Any expenses incurred by such Indemnified Person with respect to the submission or execution of any such report or return, or the filing or recording thereof, shall be reimbursed to such Indemnified Person by the Lessee in the manner provided in paragraph (d) of this Section 6. Each Indemnified Person agrees to provide the Lessee, in a timely manner, all information requested by the Lessee in the possession of such Indemnified Person which is reasonably required for the preparation and filing of such report or return.

All the obligations of the Lessee and any Indemnified Person under this Section 6 shall survive and continue, notwithstanding payment of all amounts under the CSA and the termination of this Lease, but only with respect to periods included in the term of this Lease. The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee or any subsidiary or affiliated corporation of the Lessee of the payment of any installments of principal or interest payable under the CSA, or a guarantee of any residual value of the Units following the expiration of the term hereof as such term may or may not be renewed.

SECTION 7. Maintenance; Casualty Occurrences; Insurance. The Lessee, at its own expense and in a manner

no less thorough and complete than is the prudent industry standard for Class I line-haul railroads, will maintain, service and adhere to Lessee's standard preventive maintenance schedule with respect to each Unit so that each Unit will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations, and (c) suitable for immediate purchase or lease and immediate regular use in main line freight service by a Class I line-haul railroad (not then a debtor in any insolvency, bankruptcy or reorganization proceedings). In no event shall any Unit be maintained or serviced to a lesser standard for maintenance, or serviced on a basis less frequent than the maintenance standard, or maintenance or service scheduling basis, employed as of any given time during this Lease by the Lessee for any similar equipment owned or leased by it at such given time.

In the event that any Unit shall be or become lost, stolen, destroyed or irreparably damaged, or in the opinion of the Lessee worn out from any cause whatsoever, permanently returned to the appropriate Builder pursuant to any patent indemnity provision of the CSA, or taken or requisitioned by condemnation or otherwise by the United States Government or by any other government or governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days (such occurrences being hereinafter called "Casualty Occurrences"), prior to the return of such Unit in the manner set forth in Section 14 hereof, the Lessee shall promptly (but in any event within 60 days after such Casualty Occurrence) and fully notify the Lessor and the Vendor, with respect thereto. By the later of: (i) the Rental Payment Date next succeeding such event and (ii) the 180th day following such event, (provided any such loss, return, taking or requisition shall have continued for at least 90 consecutive days), the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit then due and payable or accrued to such date (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is 180 days) plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the Rental Payment Date on or next succeeding the date of such Casualty Occurrence in accordance with Schedule B hereto referred to below, together with, if such payment is made pursuant to clause (ii) above, interest on the Casualty Value payment from the Rental Payment Date preceding such 90th day to such



90th day, at a rate equal to the higher of 10 3/4% or the "prime" rate of interest as announced from time to time by Morgan Guaranty Trust Company of New York. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or permanent return to the appropriate Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis, and the Lessee may be a purchaser of such Unit (unless such Unit is declared worn out by the Lessee) and shall notify the Lessor prior to any such purchase by the Lessee. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit permanently returned to the appropriate Builder pursuant to any patent indemnity provision of the CSA in an amount equal to any patent indemnity payment in respect of such Unit made by the appropriate Builder to the Vendor under the CSA.

The Casualty Value of each Unit as of any Rental Payment Date shall be an amount for that Unit calculated as set forth in Schedule B hereto.

Whenever any Unit shall suffer a Casualty Occurrence after the final payment of rent in respect thereof is due pursuant to Section 3 hereof and before such Unit shall have been returned in the manner provided in Section 14 hereof, the Lessee shall promptly (as provided above) and fully notify the Lessor with respect thereto and, except as provided in Section 14 hereof, pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to the Casualty Value for such Unit on the last Rental Payment Date. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit or return to the Builder of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any such Unit suffering a Casualty Occurrence, or any component thereof,

at the best price obtainable on an "as is, where is" basis, and the Lessee may be purchaser of such Unit (unless such Unit is declared worn out by the Lessee) and shall notify the Lessor prior to any such purchase by the Lessee. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition (other than a requisition which constitutes a Casualty Occurrence) for use by the United States Government or by any other government or governmental entity (hereinafter collectively called "Government") of any Unit during the term of this Lease, all of the Lessee's obligations (including without limitation the obligation to pay rent) under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease, the Lessee shall be obligated to return such Unit to the Lessor pursuant to Section 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease; but the Lessee shall in all other respects comply with the provisions of said Section 11 or 14, as the case may be, with respect to such Unit except, however, if such Unit shall be destroyed or irreparably damaged or in the opinion of the Lessee worn out as a result of any requisition that continues to the end of the Basic Term, the Lessee shall have the right to declare a Casualty Occurrence. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease shall be paid over to, or retained by, the Lessor.

Except as hereinabove in this Section 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of all Units to the Lessor, at its own expense, cause to be carried and maintained casualty insurance and public liability insurance in respect of the Units at the time subject hereto, against such risks, in such amounts and on such terms and conditions as are satisfactory to the Lessor and the Vendor; provided, however, that the Lessor and the Vendor will be reasonable in determining such terms and conditions and, in any event, such insurance shall be comparable in amounts and against such risks as are customarily insured against by the Lessee in respect of similar equipment owned or leased by it, but in no event shall such coverage be for amounts or against risks less than the prudent industry standard for Class I line-haul railroads. All policies with respect to such insurance shall provide for payments to the Lessor and the Vendor as additional named insureds and loss payees, as their interests may appear, shall provide for at least 30 days' prior written notice by the insurance carrier to the Lessor and the Vendor in the event of cancelation, expiration or amendment (and the Lessee shall provide 30 days' prior written notice to the Lessor and the Vendor in any such event), shall include waivers by the insurer of all claims for premiums against the Lessor and the Vendor, and shall provide that losses are payable notwithstanding, among other things, any act of negligence of the Lessee, the Lessor or the Vendor, more hazardous use or occupation of the Units than that permitted by such policies, any breach or violation by the Lessee, the Lessor or the Vendor of any warranty, declaration, condition or other provision contained in any such policy, or foreclosure, notice of sale or any other proceeding in respect of the Units, or any change in the title to or ownership of any of the Units. Each such insurance policy shall expressly provide that all of the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Lessee) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by the Lessor or the Vendor. The Lessee shall, not later than 30 days prior to the expiration date of any of its insurance policy or policies required to be carried and maintained with respect to the Units under this Section 7, furnish to the Lessor and the Vendor a written notice to the effect that (i) the Lessee is in good faith negotiating the renewal of such policy or policies and (ii) the Lessee expects to furnish to the Lessor and the Vendor certificates evidencing renewal of such policy or policies, as promptly as practicable, but in no event later

than 15 days after such expiration date. Five business days prior to such expiration date, the Lessee shall notify the Lessor and the Vendor as to the status of such renewal negotiations. The Lessee shall furnish to the Lessor and the Vendor certificates evidencing renewal of such policy or policies not later than 15 days after the expiration date of such policy or policies. In the event that the Lessee fails to renew such policy or policies on the expiration date of any of its policy or policies required to be carried or maintained with respect to the Units under this Section 7, the Lessee shall furnish to the Lessor and the Vendor a prompt telephonic notice (promptly confirmed in writing) thereof. In the event that the Lessee shall fail to maintain insurance as herein provided the Lessor may at its option on five business days' prior written notice to the Lessee (which notice may be given five business days prior to the expiration of such insurance) provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand from time to time, reimburse the Lessor for the cost thereof together with interest on the amount of such cost from the date of payment thereof at the Penalty Rate as defined in Section 16 hereof. The Lessee shall, at its own expense, make all proofs of loss and take all other steps necessary to collect the proceeds of such insurance. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, pay such insurance proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value paid by the Lessee with respect to such Unit and, only if the insurance policy has been maintained by the Lessee, any balance of such insurance proceeds shall be paid to the Lessee (provided, however, that, if the Lessee failed to maintain such insurance policy, any balance of such insurance proceeds shall remain the property of the Lessor), and any balance of such condemnation payments shall remain the property of the Lessor (except to the extent such balance includes a pro rata share of the proceeds with respect to any readily removable property of the Lessee). All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired, provided no Event of Default (or other event which after notice or lapse of time or both

would become an Event of Default) shall have occurred and be continuing. Any amounts paid or payable to the Lessor under the foregoing insurance shall not be reduced on account of any amount which may be paid or payable to the Lessor by reason of claims made under any other policies of insurance under which the Lessor is a beneficiary or claimant. Notwithstanding the foregoing, the Lessor shall in no event be obligated to participate in the funding of any self-insurance program of the Lessee.

SECTION 7A. Flatcars. At all times prior to the expiration of this Lease or any renewal thereof, the Lessee will cause each Unit to be and remain attached or affixed to a flatcar leased from Trailer Train Company, a Delaware corporation ("Trailer Train"), under a Car Contract, with Trailer Train (the "Car Contract"). If for any reason the Car Contract shall be in default or shall terminate as to any flatcar to which a Unit is attached or affixed, the Lessee will promptly notify the Lessor of such default or termination, and, upon the request of the Lessor, will promptly cause such Unit to be removed from such flatcar and to be and remain attached or affixed to another flatcar which is either (i) leased under another lease which is not in default or (ii) owned by the Lessee free and clear of all liens. In the event that any Unit is to be attached or affixed to a flatcar pursuant to clause (i) of the next preceding sentence or to another flatcar leased under a Car Contract other than the flatcar to which such Unit was attached at the commencement of the term of this Lease for such Unit, the Lessee will furnish to the Lessor, as soon as practicable but in any event not later than 30 days after such Unit is so attached or affixed, written agreements of the lessor of such flatcar, of like substance to the written agreements with respect to such Unit furnished by Trailer Train prior to or at the commencement of the term of this Lease for such Unit and the Lessee agrees to use its best efforts to furnish to the Lessor, as soon as practicable but in any event not later than 30 days after such unit is so attached or affixed, copies of all financing documents relating to any such flatcar which is not leased from Trailer Train. In the event that any Unit shall fail to be attached to a flatcar in accordance with the provisions of the first or second sentence of this paragraph (other than by reason of maintenance being performed in accordance with § 7 hereof) and such failure shall continue for 90 consecutive days, or in the event that the written agreement or financing documents referred to in the third sentence of this paragraph with respect to any Unit shall not be furnished for any reason prior to the time provided in said

sentence, or in the event that the financing documents furnished by the Lessee do not establish to the satisfaction of the Lessor that the Unit shall not constitute an accession to the flatcar and that the Unit shall not become subject to any security interest or other interest of any party to such financing, then, in any such case, such Unit, at the option of the Lessor, shall be deemed to have suffered a Casualty Occurrence under § 7 hereof.

At all times prior to the expiration of this Lease or any renewal thereof, the Lessee will perform its obligations under, and will exercise any and all rights or options to renew the term of, and will not cancel or otherwise terminate, the Form A Car Contract or any other lease or leases covering the flatcars to which the Units are attached.

SECTION 8. Reports. On or before April 30 in each year, commencing with the calendar year 1988, the Lessee will furnish to the Vendor and the Lessor a certificate signed by the Chief Mechanical Officer of the Lessee (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the CSA, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending a determination of whether a Casualty Occurrence has occurred or pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by Section 5 hereof have been preserved or replaced. The Lessor, at its sole expense, shall have the right (but shall not have any obligation) by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

The Lessee shall promptly notify the Lessor and the Vendor of any occurrence of an Event of Default or other event which after notice or lapse of time or both would become an Event of Default, specifying such Event of Default and all such events and the nature and status thereof.

SECTION 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO

REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO THE TITLE (EXCEPT THAT THE LESSOR REPRESENTS THAT IT WILL HAVE WHATEVER TITLE IT RECEIVES FROM THE APPROPRIATE BUILDER IN RESPECT OF EACH UNIT), VALUE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR USE OF THE UNITS OR ANY PART THEREOF, AS TO THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, AS TO THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK, OR COPYRIGHT, AS TO THE ABSENCE OF ANY OBLIGATION BASED ON STRICT LIABILITY IN TORT OR OTHERWISE, OR ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE UNITS OR ANY PART THEREOF (EXCEPT THAT THE LESSOR WARRANTS THAT SO LONG AS (i) NO EVENT OF DEFAULT EXISTS HEREUNDER, (ii) THE LESSEE IS COMPLYING WITH PROVISIONS OF THE CONSENT AND (iii) THE VENDOR IS ENTITLED (WITHOUT REGARD TO ACTS OF MISAPPROPRIATION BY ITS OWN EMPLOYEES) TO APPLY THE PAYMENTS (AS DEFINED IN THE LEASE ASSIGNMENT) IN ACCORDANCE WITH THE LEASE ASSIGNMENT, THE LESSEE SHALL HAVE QUIET ENJOYMENT OF THE UNITS AND SHALL BE ENTITLED TO THE OTHER RIGHTS OF POSSESSION, USE AND ASSIGNMENT PROVIDED UNDER SECTION 12 HEREOF), it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against a Builder, including but not limited to claims and rights, under Article 13 of the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, subleasing, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described herein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not

assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, at all times to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units (collectively "Applicable Laws"), to the extent that such Applicable Laws affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal thereof, (i) such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will comply therewith at its own expense (any such additions which are readily removable without material damage to the Units shall become the property of the Lessee if their removal would not adversely and materially affect the value of the Units and their installation was required by law for limited special use and not general operation) or (ii) such laws or rules require disposal, removal and dismantlement of or stripping any part or parts of the Equipment from the Equipment, the Lessee promptly will give the Lessor and the Vendor written notice to such effect in reasonable detail and will set forth in detail a reasonable course of action, determined by the Lessee in good faith and according to the Lessee's normal business practice, for such disposal, removal and dismantlement of or stripping such part or parts of the Equipment. The Lessee shall not dispose of, remove, dismantle or strip any such part or parts of the Equipment without the written consent of the Lessor and Vendor, which consent shall not be unreasonably withheld; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the CSA. The Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value of the Units). The additions,



modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, except to the extent such additions, modifications, or improvements are described in the following sentence. Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of the provisions contained hereinabove, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the United States Department of Transportation or any other regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for additions required by law for limited special use and not general operation which are readily removable without causing material damage to the Units and without adversely and materially affecting the value of the Units) shall immediately be vested in the Lessor.

The Lessee agrees to indemnify, protect and hold harmless each Indemnified Person from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability, but excluding all losses, damages, injuries, liabilities due to, and any claims for wilful misconduct or gross negligence of such Indemnified Person otherwise to be indemnified) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent, trademark and copyright liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default, an event of default or an Event of Default under this Lease or any sublease entered into pursuant to Section 12 hereunder, the ownership of any Unit, the manufacture, ordering, acquisition, use, operation, condition, purchase, sublease, delivery, acceptance, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise expressly provided in Section 14 of this Lease; provided, however, that this paragraph shall not be read as a waiver of any right of action the Lessee may have in respect of any such act, omission or misrepresentation of such Indemnified

Person or anyone acting under, through, or on behalf of such Indemnified Person. The indemnities arising under this paragraph shall be paid on an after-tax basis and shall continue in full force and effect notwithstanding (i) the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease and (ii) that an Indemnified Party may have a right to be indemnified by another party.

Except as otherwise expressly provided in Section 14, the Lessee shall bear the responsibility and risk for, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any or all of the Units of Equipment. The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required filing date (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor of, or the interest of the Vendor in, the Units, or the leasing thereof to the Lessee.

The indemnities contained in this Section 9 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this Section 9 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee or the Lessor therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise. The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee of the payment of any installments of principal or interest payable under the CSA or a guarantee of the residual value of the Equipment.

SECTION 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein called an "Event of Default") shall occur:

(A) default shall be made in payment of any amount provided for in Section 3 or 7 hereof, and such default shall continue for five business days;

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

(C) default shall be made in observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Consent or in the Participation Agreement and such default shall continue for 30 days (or, in the case of a default under Section 7 hereof, five business days') after the earlier of (i) written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied and (ii) the date on which such default shall first become known to any officer of the Lessee;

(D) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease, the Consent and the Participation Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision as the same may hereafter be amended; or

(E) any other proceeding shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee under this Lease, the Consent and the Participation Agreement under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of such obligations), and, unless such proceeding shall have been dismissed, nullified, stayed or otherwise

rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations shall not have been and shall not continue to have been duly assumed in writing pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceeding shall have been commenced;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including Net Economic Return of Federal income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lease to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents, subject to compliance with all mandatory requirements of law, enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may then be due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such rental period by a fraction of which the numerator is such number of days and the denominator is 180 days) including but not limited to any amounts due the Lessor pursuant to Section 6 hereof; provided, however, that

the Lessee shall not be relieved of its obligations under Section 6 or Section 22 hereof except as specifically provided therein and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of an 11.16% per annum discount, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or (y) an amount equal to the excess, if any, of the Casualty Value as of the Rental Payment Date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the Rental Payment Date on or next preceding the date of termination over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor

existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all claims against the Lessor and the Vendor and their agent or agents for damages of whatever nature in connection with any retaking of any Unit in any reasonable manner. The Lessor and the Lessee agree that the Lessor shall be entitled to all rights (such rights being fundamental to the willingness of the Lessor to enter into this Lease) provided for in § 1168 of the Bankruptcy Act or any comparable provisions of any amendment thereto, or of any other bankruptcy act, so that the Lessor shall have the right to take possession of the Equipment upon an Event of Default under this Lease regardless of whether the Lessee is in reorganization.

No failure by the Lessor in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege by the Lessor preclude any other or future exercise thereof, or the exercise of any other right, power or privilege.

SECTION 11. Return of Units upon Default. If this Lease shall terminate pursuant to Section 10 hereof, the Lessee shall forthwith deliver possession of the Units and the flatcars to which they are attached to the Lessor and shall assign to the Lessor all rights to the use of such flatcars. Each Unit so delivered shall be in the condition required by the first paragraph of Section 7 hereof. For the purpose of delivering possession, the Lessee shall:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any flatcars to which any Units are attached have been interchanged or which may have possession thereof to return such flatcar so interchanged) place such Units upon such storage tracks or other premises of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) if so required by the Lessor, detach each Unit from the flatcar to which it has been attached;

(c) cause such Units to be stored on such tracks or other premises at the risk of the Lessee without

charge for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Lessor; and

(d) cause the same to be transported to any reasonable place as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own expense, maintain and keep the Equipment in the condition required by the first paragraph of Section 7 hereof and will permit and cooperate with the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same in a reasonable manner consistent with current industry practices. All rent and car hire charges earned in respect of the Units after the date of termination of this Lease shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which \$9.86 for each such day exceeds the actual earnings received by the Lessor with respect to such Unit for each such day.

Without in any way limiting the foregoing obligations of the Lessee under this Section 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of such Unit in the name and on behalf of the Lessee to obtain possession thereof from whomsoever shall be in possession of such Unit at the time.

SECTION 12. Assignment; Possession and Use. So long as no Event of Default exists hereunder, any rights arising under this Lease shall not be assignable in whole or in part by the Lessor or any assignee thereof without the written consent of the Lessee, which consent shall not be unreasonably withheld. Upon the written notice by the Lessor or any assignee thereof to the Lessee of the request

for assignment, the Lessee will have 10 business days to respond to such request; provided, however, that the Lessee's failure to respond within 10 business days shall be deemed to be approval. If the Lessee will not permit such assignment, the Lessee shall provide the Lessor with a written statement describing in reasonable detail the reasons for such denial. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's successors and assigns.

So long as no Event of Default exists hereunder, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and, without the prior written consent of the Lessor, the Lessee may sublease the Units to, or permit their use by, a user incorporated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by the Lessee or such user or by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Lessor's consent, not to be unreasonably withheld, must be obtained for any sublease that is for a term longer than six months; provided further, however, that the Lessee shall not sublease or permit the sublease or use of any Unit to service involving operation or maintenance outside the United States of America except that occasional service in Canada shall be permitted so long as such service in Canada does not involve regular operation and maintenance outside the United States of America; and provided further, however, that any such sublease or use shall be consistent with the provisions of Section 22 hereof. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety.

The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than a lien, charge, security interest or other encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the



Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrances which arises.

SECTION 13.1 Options Upon Expiration of the Lease Term Purchase Option. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor, not less than 180 days prior to the end of term, elect to purchase all but not less than all the Units then subject to this Lease as are identified in Lessee's written notice, at the lesser of (i) 35% of the Purchase Price thereof or (ii) the Fair Market Purchase Price thereof payable in immediately available funds on the dates this Lease expires with respect to each Unit.

Upon payment of the price for any Unit, pursuant to an election by the Lessee to purchase the Unit, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Builder thereof, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

Fair Market Purchase Price shall be the price agreed to by Lessee and Lessor, in writing, as the cash purchase price that would obtain in an arm's-length transaction between a purchaser and seller, both being informed and willing and neither being under any compulsion to buy or sell. Lessee's notice pursuant to the first sentence of the first paragraph of this Section 13.1 shall include a conditional offer (conditioned solely on approval within a reasonable period of time by Lessee's board of directors, which approval Lessee's management shall seek if the conditional offer is accepted by Lessor) to the Lessor to purchase the Units identified in such notice at the price designated therein by Lessee as the Fair Market Purchase Price. Such conditional offer shall remain open for acceptance by Lessor at all times from the date the notice is given until the 75th day before the end of the term of this Lease with respect to such Units. During the period that such conditional offer remains open for acceptance by the Lessor (but in no event beyond the end of the 60th day before the end of the term of this Lease with respect to such Unit), the Lessor shall not sell or agree to sell to anyone other than the Lessee any Units so designated for a price equal to or lower than the price so offered by the

Lessee. If the Lessor and the Lessee do not reach agreement on the Fair Market Purchase Price by the end of the 75th day before the end of the term of this Lease with respect to such Units, the Lessor shall have no obligation to sell such Units to the Lessee at any price and shall have no restrictions on its ability to sell to any other party at any price.

13.2. Renewal Option. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may elect to renew the term of this Lease for one additional three-year period by written notice delivered to the Lessor not less than 180 days prior to the end of the original term of this Lease, electing to extend such original term of this Lease in respect of all but not less than all the Units then covered by this Lease for an additional one three-year period commencing on the scheduled expiration of such original term of this Lease. Such election shall be irrevocable. The rental payable during each extended term shall be payable semi-annually on January 2 and July 2 of each year of such extended term and shall be in an amount equal to the Fair Market Rental.

Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than the Lessee) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental.

If, after 30 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 30 days after such notice is given, appoint a third independent appraiser. If no such third appraiser is appointed within 30 days after such notice is given either party may

apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 60 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two determinations shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in New York, New York in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be shared equally by the Lessor and Lessee.

SECTION 14. Disposition of Units upon Expiration of Term. Unless Lessee shall have purchased and paid for the Units pursuant to the terms and conditions set forth in Section 13 hereof, or unless Lessee shall have renewed this Lease Agreement under any terms and conditions, or unless Lessee shall have paid Lessor the Casualty Value for the Units, Lessor shall have the following options which will be exercised with at least 60 days written notice prior to the expiration of the term:

(1) Require Lessee to remove the Units from the flatcars and prepare the flatcars so that they are acceptable to Trailer Train, all at Lessee's expense and risk. During the period of time necessary for removal of the Units, all related expenses (flatcar rental, insurance, transportation charges, etc.) shall be Lessee's responsibility; or

(2) Require the Lessee to store the Unit or Units on its storage tracks for a period not exceeding 90 days from the expiration date ("Storage Period") and transport the same, at any time within the Storage Period, to any point that Lessor shall designate on Lessee's lines or to a

point on Lessee's lines for a connecting carrier for shipment, the movement and storage of such units during the Storage Period to be at the expense and risk of the Lessee. During the Storage Period Lessor shall not be responsible for the expenses of storage. During the Storage Period under this option, Lessor shall be responsible for all rents, including but not limited to Trailer Train rental due on the subject flatcars, from and after the date each flatcar is delivered to the storage tracks. If Lessor requests and provides funds, Lessee shall continue to make the subject flatcar rent payments to Trailer Train on Lessor's behalf during the Storage Period, or if Lessor requests, Lessee shall assign whatever rights it has to the subject flatcars to another Class I railroad. Each Unit returned to the Lessor pursuant to this subparagraph shall be in the condition required by the first paragraph of Section 7 hereof. Subsequent to the expiration of the term and prior to any transfer of any Unit from the possession and control of Lessee to Lessor, the parties hereto and a representative of Trailer Train shall inspect the Units for damage in a reasonable manner consistent with current industry practice. In the event that any Unit shall suffer a Casualty Occurrence during such Storage Period, the Lessee shall pay the Lessor the Casualty Value thereof as provided in Section 7 hereof, provided, however, the Lessee shall have no obligation to pay the Lessor the Casualty Value for a Unit which suffers a Casualty Occurrence while being operated or inspected by the Lessor or its agents (other than the Lessee) during the Storage Period. During such Storage Period the Lessee will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same in a reasonable manner and consistent with current industry practice; provided, however, that the Lessee shall not be liable, except in the case of negligence or strict liability of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor or any prospective purchaser, lessee or user, such rights of inspection. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof.

SECTION 15. Recording. The Lessee, at its cost and expense, will cause this Lease and the CSA, prior to the delivery and acceptance of any Unit hereunder, and any

assignment of either thereof to be filed in accordance with 49 U.S.C. § 11303 and deposited with the Registrar General of Canada (and notice of such deposit to be given forth in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. The Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments (including the filing of appropriate Uniform Commercial Code financing statements and continuation statements under the laws of the Commonwealth of Pennsylvania and the State of Michigan) required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to its satisfaction, of the Vendor's and the Lessor's rights in the Units, or for the purpose of carrying out the intention of this Lease, the CSA and the assignments hereof and thereof to the Vendor; and the Lessee will promptly furnish or cause to be furnished to the Vendor and the Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this Section 15, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor.

SECTION 16. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount on the overdue rentals and other obligations for the period of time during which they are overdue at a rate equal to the higher of (i) 11 3/4% or (ii) the "prime" rate of interest as announced from time to time by Morgan Guaranty Trust Company of New York plus 1% ("Penalty Rate").

SECTION 17. Lessor's Right To Perform for the Lessee. If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may (but shall not be obligated to do so) upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at the Penalty Rate, shall be payable by the Lessee upon demand except as otherwise provided in this Lease. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor or any assignee of the Lessor against the Lessee hereunder or be deemed to cure the default of the Lessee hereunder.

SECTION 18. Notices. Any notice required or permitted hereunder shall be deemed to have been received by the addressee on the date of actual receipt (if such date is a business day, otherwise on the next business day) if transmitted by mail, air courier, telex, telecopy or similar transmission, or by hand, addressed as follows:

(a) if to the Lessor, c/o Whirlpool Leasing Services, Inc., at 17177 N. Laurel Park Drive, Suite 233, Livonia, Michigan 48152, Attention of Leverage Lease Administrator; and

(b) if to the Lessee, at Consolidated Rail Corporation, 1310 Six Penn Center Plaza, Philadelphia, Pennsylvania 19103, Attention of Assistant Treasurer-Financing;

or at such other address or either party shall have designated to the other party in writing. Copies of each such notice shall be given to the Vendor at P.O. Box 2258 (or if by hand, 2 Hopkins Plaza), Baltimore, Maryland 21203, Attention of Corporate Trust Department.

SECTION 19. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights and obligations of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

SECTION 20. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or

are, respectively, the date or dates stated in the acknowledgments hereto annexed.

SECTION 21. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed or deposited.

SECTION 22. (a) Assumed Tax Consequences. This Lease has been entered into on the assumption that it will have the following tax consequences (herein referred to as "Assumed Tax Consequences"):

(i) The transaction will be treated as a lease for tax purposes. The Lessor will be treated as the owner and lessor of each Unit and the Lessee will be treated as lessee of each Unit.

(ii) In the hands of the Lessor as of the date of delivery and acceptance of each Unit, such Unit will constitute (A) "recovery property" and "7-year property" within the meaning of Section 168 of the Internal Revenue Code of 1986, as amended ("Code"), and the Lessor will be entitled to the deductions allowed under Section 168 of the Code with respect to such Unit (the "Cost Recovery Deductions").

(iii) The Lessor will be entitled to the Cost Recovery Deductions with respect to the full amount of the Lessor's tax basis for each of the Units and the full amount of the Cost Recovery Deductions will be allowed to the Lessor and there will be no recapture of the Cost Recovery Deductions by the Lessor.

(iv) The amounts of interest payable on any debt incurred with respect to this transaction shall be deductible as interest by the Lessor in accordance with its method of accounting (the "Interest Deductions").

(v) The Lessor shall be entitled to depreciate the Units for state and local income tax purposes in the Lessor's home state (the "State and Local Tax Benefits").

(vi) Alterations, improvements and additions to any Unit by the Lessee will not result in any tax consequences to the Lessor.

(vii) All income and deductions with respect to the Units will be from sources within the United States.

(viii) The maximum Federal income tax rate applicable to the Lessor is 39.95% in 1987 and 34% in 1988 and subsequent years.

It being expressly agreed, however, that the Lessee does not warrant or represent the accuracy of any of the assumptions set forth in subsection (a) of this Section.

(b) Lessee's Representations and Warranties. The Lessee represents and warrants for purposes of this Section that:

(i) in the hands of the Lessor as of the date of delivery and acceptance of each Unit, such Unit will constitute (A) "recovery property" and "7-year property" within the meaning of Section 168 of the Code, and the Lessor will be entitled to the Cost Recovery Deductions with respect to such Unit (the "Cost Recovery Deductions");

(ii) the Lessee has not made any claim and will not make any claim predicated on tax or legal ownership of the Units, including but not limited to, a claim of the Cost Recovery Deductions, the Interest Deductions or the State and Local Tax Benefits;

(iii) at all times during the Lease Term the Lessee will not use nor permit the use of the Units in any taxable year of the Lessor "predominately outside the United States," within the meaning of Section 168(f)(2) of the Code;

(iv) at all times during the Lease Term, the Lessee will not use nor permit the use of the Units outside the United States of America in such a manner as to affect the ability of the Lessor to treat, for Federal income tax purposes, each item of income, deduction and credit relating to all Units subject to the Lease as being derived from or allocable to, sources within the United States of America;



(v) as of the date of delivery and acceptance of each Unit, such Unit will not be property described in Section 168(j) of the Code;

(vi) as of the date of delivery and acceptance of each Unit, such Unit will not be "limited use property" within the meaning of the Internal Revenue Service Revenue Procedure 76-30, 1976-2 C.B. 647.

(c) Indemnity. If by reason of any act of commission or omission (including any acts of commission or omission permitted to be taken pursuant to the Lease), misrepresentation, breach of any agreement, covenant, representation or warranty contained herein on the part of the Lessee, (i) the Lessor shall lose the right to claim or shall not claim (as the result of a good faith determination based upon the advice of independent tax counsel selected by the Lessor and approved by Lessee, which approval shall not be unreasonably withheld (hereinafter referred to as "Tax Counsel"), that such claim is not properly allowable by reason of any act of commission or omission, misrepresentation or breach of any agreement, covenant or warranty by the Lessee), shall suffer a disallowance of, or shall be required to recapture all or any portion of the Cost Recovery Deductions, the Interest Deductions, or State and Local Tax Benefits or such benefits are available as to the Lessor only at later dates than assumed, or (ii) the Lessor shall suffer a disallowance of or be required to recapture an amount of foreign tax credit which would have been allowable to the Lessor if the Lessor had not participated in the transactions contemplated by the Lease (the "Foreign Tax Credit") (any of such events being a "Loss"), then the Lessee shall pay to the Lessor such amount or, from time to time, such amounts as, shall be equal to the additional taxes, including penalties and interest, if any, payable by the Lessor from time to time as a result of any such Loss plus any taxes required to be paid by the Lessor on such amounts; provided that indemnification payments hereunder shall be an amount sufficient, on an after-tax basis, to preserve the Lessor's Net Economic Return plus, on an after-tax basis, an amount equal to any interest, additions to tax and/or penalties imposed as a result of the Loss which gave rise to indemnification hereunder. The Lessor's net after-tax economic and accounting yields and cash flows computed on the basis of such assumptions and the same method of accounting as were utilized by the Lessor in evaluating this transaction are herein called "Net Economic Return."

Upon the request of the Lessee, the Lessor will furnish to the Lessee a certificate of the Lessor's independent accountants, verifying that the amount of such indemnification payment is in an amount sufficient, but not greater than the amount necessary, on an after-tax basis assuming a combined Federal and State tax rate of 43% for 1987 and 37% for 1988 and all subsequent years, to preserve the Lessor's Net Economic Return.

(d) Subsequent Benefit. If, as a result of any Loss for which indemnification is paid by the Lessee hereunder, the aggregate Federal income taxes paid or accrued by the Lessor for any taxable year shall be less than the amount of such taxes which would have been payable by the Lessor had no such Loss occurred, and if such reduction in taxes was not taken into account in determining the amount of indemnification payable by the Lessee hereunder, then the Lessor will pay the Lessee the amount of such difference in taxes plus an amount equal to any additional reductions in tax realized by the Lessor as a result of such payment; provided, however, that the Lessor shall not be obligated to make any payment pursuant to this Section 22 (i) so long as the Lessee is in default or a condition exists nor has an event occurred which with the lapse of time and/or the giving of notice would constitute a default under this Agreement, (ii) to the extent that such payment would cause the Lessor not to realize its Net Economic Return, or (iii) to the extent that such payment, together with all amounts previously paid by the Lessor, pursuant to this subsection (d) are in excess of all amounts previously paid by the Lessee with respect to such loss.

(e) Payment. All amounts payable to the Lessor hereunder shall be paid promptly and in immediately available funds and in any event within 15 days after receipt by the Lessee of a written demand therefor on the basis that the Lessor has paid or within 15 days expects to pay such amounts. Any payment due to the Lessee from the Lessor pursuant to this Section shall be paid promptly and in any event within 15 days after the Lessor realizes any reduction in its income or franchise taxes based upon net income.

(f) Limitations on Special Tax Indemnities. Notwithstanding anything to the contrary hereinbefore set forth, no amount shall be payable to the Lessor as an indemnity under this Section 22 in respect of any Loss to

the extent that such Loss results from the occurrence of any of the following events:

(i) a voluntary transfer or other voluntary disposition by the Lessor of any interest in any unit or any interest in the Lease, except pursuant to its exercise of any rights in respect of a Default;

(ii) the failure of the Lessor to claim (unless Tax Counsel has advised that such claim is not properly allowable by reason of acts of commission or omission, misrepresentations or breach of any agreement, covenant or warranty by the Lessee) the Cost Recovery Deductions, the Foreign Tax Credits, the Interest Deductions or the State and Local Tax Benefits;

(iii) the loss results directly from the gross negligence or willful misconduct of the Lessor that is inconsistent with the tax assumptions in this Section;

(iv) the failure of the Lessor to have sufficient liability for tax against which to credit the Investment Credit or to have sufficient income to benefit from the Cost Recovery Deductions or the Interest Deductions or to utilize the State and Local Tax Benefits, as the case may be;

(v) a Casualty Occurrence to the extent of the Casualty Value timely paid by the Lessee pursuant to Section 7 of the Lease; or

(vi) any changes in tax law (it being understood that this clause (vi) shall not affect the rights of the Lessor under Section 3(b) hereof).

(g) Indemnity for Improvements. If at any time the Lessor is required to include in its gross income an amount in respect of any improvement or addition to the units or any accession referred to in Section 9 hereof Lessee shall pay to the Lessor, as an indemnity, such amount or amounts as, after deduction of all taxes required to be paid by the Lessor in respect to the receipt of such amounts shall be equal to the additional taxes payable by the Lessor from time to time as a result of such Capital Expenditures plus the amount of any interest, penalties or additions to tax payable as a result of any such Capital Expenditures provided that indemnification payments hereunder shall be an amount sufficient so that, after considering the tax and other effects of the Capital Expenditures and the receipt of

indemnification payments hereunder, shall preserve the Lessor's Net Economic Return. If as a result of any such Capital Expenditures the taxes paid by the Lessor for any taxable year shall be less than the amount of such taxes which would have been payable by the Lessor had not such Capital Expenditures been made, then the Lessor shall pay the Lessee the amount of such savings in taxes plus any additional tax benefits realized by the Lessor as the result of such payment; provided, however, that the Lessor shall not be obligated to make any payment pursuant to this sentence with respect to any Capital Expenditures (i) so long as the Lessee is currently in default or a condition exists or an event has occurred which with the lapse of time and/or the giving of notice would constitute a default under this Agreement, (ii) to the extent that any such payment would cause the Lessor not to realize its Net Economic Return or (iii) to the extent that such payment, together with all amounts previously paid by the Lessor to the Lessee pursuant to this subsection (g) with respect to such Capital Expenditure, are in excess of all amounts previously paid by the Lessee to the Lessor with respect to such Capital Expenditure.

(h) Contest of Disallowance of Tax Benefits. If a claim ("Claim") shall be made at any time which, if successful, would require the Lessee to indemnify the lessor under this Section, the Lessor hereby agrees to contest such Claim in good faith, discussing with Lessee such actions, including but not limited to selection of forum, as Lessee may reasonably request; provided, however, that any final decision on such action shall be made solely by the Lessor; provided, further, however, that:

(i) within 30 days after notice by the Lessor to the Lessee of such Claim, the Lessee shall request that such Claim be contested;

(ii) the Lessor shall control all proceedings in connection with such Claim and, at its sole option, may forego or terminate any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service with respect to such Claim and may, at its sole option, either pay the tax claimed and sue for a refund in the appropriate United States District Court or the United States Claims Court as the Lessor shall elect, or contest such Claim in the United States Tax Court; provided, however, that the Lessee shall have no obligation to indemnify the Lessor for any such Taxes, if as a result of the Lessor's foregoing or

terminating any such administrative appeals, proceedings, hearings, or conferences, the Lessor shall lose the right to contest the merits of such impositions of levies; provided further, however, that the preceding proviso shall have no application if the contest is terminated solely as a result of the Lessee's failure to comply with any material provision of this Section 22(h) and Section 22(i).

(iii) prior to the Lessor's taking any such requested action, the Lessee at the Lessee's expense shall have furnished the Lessor in a timely manner with an opinion of independent tax counsel satisfactory to the Lessor to the effect that there exists a reasonable likelihood of the Lessor's prevailing on the merits in the contest of such Claim;

(iv) the Lessee shall have indemnified the Lessor in a manner satisfactory to the Lessor for any liability or loss directly related to such Claim which the Lessor may incur from time to time as the result of contesting such Claim and shall pay to the Lessor within 15 days after written demand therefor from time to time an amount which, on an after-tax basis, shall be equal to all costs and expenses which the Lessor may incur from time to time in connection with contesting or defending such Claim or any appeal thereof, including, without limitation, reasonable attorneys' and accountants' fees and disbursements, and the amount of any interest, additions to tax or penalties which may ultimately be payable as a result of contesting such Claim or appeal; and

(v) if the Lessor shall have elected hereunder to pay the tax claimed and then seek a refund, the Lessee will advance to the Lessor sufficient funds, on an interest-free basis, to pay the tax.

(i) Opinions of Tax Counsel. Notwithstanding any other obligation of the Lessor under this Section, the Lessor shall have no obligation to take any action, other than any administrative action taken pursuant to Section 22(h) (iii) hereof, with respect to any Claim unless the requirements contained in the following paragraphs are fulfilled:

(i) The Lessor shall have no obligation to file an action in the Tax Court, any U.S. District Court or the Court of Claims ("Trial Court") unless the Lessee

shall, upon request by the Lessor, have furnished the Lessor with security satisfactory to the Lessor, with respect to the Lessee's liability for indemnification under this Section with respect to such Claim, together with at Lessee's expense a timely opinion of independent tax counsel acceptable to Lessor to the effect there exists a substantial likelihood of Lessor prevailing on the merits of the Claim in the Trial Court; provided, however, that in the event the Lessor pays the tax assessment and elects to proceed directly to the Trial Court, without first exhausting the available administrative remedies, the opinion letter of the independent tax counsel shall state there exists a reasonable basis for asserting the Claim; further, provided, that any letter from the independent tax counsel shall be based upon an assumption that the Claim is filed in the forum available to the Lessor which is most favorable to the Claim; and

(ii) The Lessor shall have no obligation to appeal an adverse Trial Court decision on the Claim unless the Lessee at its own expense shall have furnished the Lessor with a timely opinion of independent tax counsel acceptable to the Lessor to the effect that it is more probable than not that the appellate court will reverse the adverse Trial Court decision; and

(iii) The Lessor shall have no obligation to appeal any adverse appellate court decision unless the Lessee at its own expense shall have furnished the Lessor with a timely opinion of independent tax counsel acceptable to Lessor to the effect that the likelihood of reversal of the adverse appellate court determination is substantially greater than the likelihood of affirmance.

(j) Deferral of Lessee's Liability. If any Claim shall be made and the Lessee shall have reasonably requested the Lessor to contest such Claim as above provided and shall have duly complied with all of the terms of subparagraph (h) of this Section, the Lessee's liability for indemnification hereunder (other than as provided in subparagraph (h)(iv) of this Section) shall be deferred until final determination of the liability of the Lessor. At such time the Lessee shall become obligated for the payment of any indemnification hereunder resulting from the outcome of such contest, and the Lessor shall become obligated to refund to the Lessee any amount received as a refund by the Lessor fairly attributable to advances by the Lessee hereunder, together with any interest received by the Lessor on such refund. Such

obligations of the Lessor and the Lessee will first be set off against each other and any difference owing by either party shall be paid within 30 days after such final determination.

(k) Notice and Cooperation. The Lessor agrees promptly to notify the Lessee in writing of any Claim and agrees not to make payment of the tax claimed or to consent to the assessment of any deficiency relating directly to such Claim for at least 30 days after the giving of such notice and agrees to give to the Lessee any relevant information relating to such Claim which may be peculiarly within the knowledge of the Lessor and otherwise to cooperate with the Lessee in good faith in order to contest any such Claim.

(l) Waiver of Indemnification Settlement. Nothing contained in this Section shall require the Lessor to contest any Claim if the Lessor shall waive the payment by the Lessee of any amount that might otherwise be payable by the Lessee under this Section by way of indemnity in respect of such Claim. The Lessor shall not enter into a settlement or other compromise with respect to any Claim without the prior written consent of the Lessee, unless (i) the Lessor shall have complied with its obligations to contest under this Section or (ii) the Lessor shall waive its right to be indemnified with respect to such Claim under this Section.

(m) Survival of Indemnities. The respective liabilities of the Lessee and the Lessor to make indemnification payments pursuant to this Section 16 shall, notwithstanding any expiration or termination of the Lease,

continue to exist until such indemnity payments are made by the Lessee and the Lessor, respectively.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

CONSOLIDATED RAIL CORPORATION,

by Thomas J. Lieber  
Assistant Treasurer

[Corporate Seal]

Attest:

Elizabeth Maggio  
Assistant Secretary

WHIRLPOOL ACCEPTANCE CORPORATION,

by \_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary



continue to exist until such indemnity payments are made by the Lessee and the Lessor, respectively.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

CONSOLIDATED RAIL CORPORATION,

by \_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

WHIRLPOOL ACCEPTANCE CORPORATION,

by

L. D. Rogers

Senior Vice President, Finance

[Corporate Seal]

Attest:

Anthony S. Allman  
Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA,)
) ss:
COUNTY OF PHILADELPHIA, )

On this 12th day of October 1987, before me personally appeared THOMAS NIEBER, to me personally known, who, being by me duly sworn, says that he is the ASST. TREASURER of CONSOLIDATED RAIL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Marianne C. Baker
Notary Public

[Notarial Seal]

MARIANNE C. BAKER
Notary Public, Phila., Phila. Co.
My commission expires Aug. 6, 1990

STATE OF MICHIGAN,)
) ss.:
COUNTY OF WAYNE )

On this day of October 1987, before me personally appeared , to me personally known, who, being by me duly sworn, says that he/she is a of WHIRLPOOL ACCEPTANCE CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My commission expires

COMMONWEALTH OF PENNSYLVANIA, )  
 ) ss:  
COUNTY OF PHILADELPHIA, )

On this            day of October 1987, before me  
personally appeared            , to me personally known,  
who, being by me duly sworn, says that he is the  
                                 of CONSOLIDATED RAIL CORPORATION, that  
one of the seals affixed to the foregoing instrument is the  
corporate seal of said corporation, and that said instrument  
was signed and sealed on behalf of said corporation by  
authority of its Board of Directors, and he acknowledged  
that the execution of the foregoing instrument was the free  
act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My commission expires

STATE OF MICHIGAN, )  
 ) ss.:  
COUNTY OF BERRIEN, )

On this 15<sup>th</sup> day of October 1987, before me  
personally appeared G. J. Kroger , to me personally known,  
who, being by me duly sworn, says that he/she is a  
Sr. Vice President, Finance of WHIRLPOOL ACCEPTANCE CORPORATION, that  
one of the seals affixed to the foregoing instrument is the  
corporate seal of said corporation and that said instrument  
was signed and sealed on behalf of said corporation by  
authority of its Board of Directors, and he/she acknowledged  
that the execution of the foregoing instrument was the free  
act and deed of said corporation.

  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

My commission expires

REBECCA JEAN DOAK  
Notary Public, Berrien County, Michigan  
My Commission Expires Feb. 7, 1989

Description of Units of Equipment

<u>Builder</u>	<u>Type</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>
Thrall Car Manufacturing Company	Bi-level enclosed autoracks	100	CR 6000-6099**
Thrall Car Manufacturing Company	Tri-level enclosed autoracks	150	CR 3900-3999 CR 5001-5050
Trinity Industries, Inc.	Tri-level enclosed auto racks	150	CR 3750-3899
		<u>400</u>	

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\* To the extent Consolidated Rail Corporation ("Conrail") purchases Units from the other Builders before the first Closing Date, Conrail will be the "Builder" hereunder and under the CSA as to all such Units and will sell such Units thereunder at the same price it paid for them.

\*\* The first 18 cars are numbered CR 2100 to 2117 and such numbers will eventually be changed to CR 6000 to 6017. This Agreement covers the cars under both sets of numbers.

Casualty Value

(Exclusive of Rent)

<u>Rental Payment Dates</u>	<u>Percentage of Purchase Price Per Unit</u>
1/02/88	103.6603
7/02/88	104.8418
1/02/89	104.1575
7/02/89	104.9627
1/02/90	103.7718
7/02/90	104.3088
1/02/91	102.6909
7/02/91	103.0460
1/02/92	101.0519
7/02/92	101.2813
1/02/93	98.9075
7/02/93	99.0099
1/02/94	96.2245
7/02/94	99.7804
1/02/95	92.7161
7/02/95	86.2082
1/02/96	85.8990
7/02/96	78.3990
1/02/97	78.5129
7/02/97	70.4338
1/02/98	70.5578
7/02/98	61.7987
1/02/99	62.0000
7/02/99	52.3918

Rental Payment Dates

Percentage of  
Purchase Price  
Per Unit

1/02/00  
7/02/00

52.8112  
42.2699

1/02/01  
7/02/01

42.9500  
31.3830

1/02/02  
7/02/02

32.8398  
21.6840

1/02/03

20.0000

Certificate of Acceptance

To: Whirlpool Acceptance Corporation ("Lessor")

I, the duly authorized representative for the Lessor and Consolidated Rail Corporation ("Lessee") under the Lease of Railroad Equipment, dated as of September 15, 1987, do hereby certify that I inspected and accepted delivery thereunder of the following Units of Equipment:

TYPE OF EQUIPMENT:

MODEL:

DATE ACCEPTED:

NUMBER OF UNITS:

NUMBERED: CR

I do further certify that the foregoing Units are in good order and condition, and conform to the specifications, requirements and standards applicable thereto as provided in the Lease.

I do further certify that each of the foregoing Units has been marked upon each side of each such Unit in letters not less than one inch in height as follows:

"Ownership Subject to Documents filed with the Interstate Commerce Commission."

The execution of this Certificate will in no way relieve or decrease the responsibility of the Builder named below for any warranties it has made with respect to the Equipment.

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Authorized Representative of  
Lessor and Lessee

BUILDER:

Basic Rent

<u>Basic Rental Payment Dates</u>	<u>Arrears</u>	<u>Advance</u>
7/2/88	4.29249	
1/2/89	5.95427	
7/2/89	4.19977	
1/2/90	6.04700	
7/2/90	4.09669	
1/2/91	6.15008	
7/2/91	3.98211	
1/2/92	6.26465	
7/2/92	3.85475	
1/2/93	6.39202	
7/2/93	3.71317	
1/2/94	6.53360	
7/2/94		10.24677
1/2/95		9.34962
7/2/95		3.17420
1/2/96		10.02841
7/2/96		2.49542
1/2/97		10.31944
7/2/97		2.20439
1/2/98		10.69255
7/2/98		1.83128
1/2/98		11.21623
7/2/99		1.30760
1/2/00		11.80181
7/2/00		.72202
1/2/01		12.45660
7/2/01		.06723
1/2/02		11.83983
7/2/02		.68400



Pricing Assumptions

Equipment Purchase Price: \$12,620,700

<u>Closing Dates:</u>	10/6/87	\$ 7,604,000
	10/22/87	2,508,350
	11/19/87	<u>2,508,350</u>
		\$12,620,700

Lease Term  
Commencement Date: January 2, 1988

Lease Term: 15 years

Interim Interest: To be paid by the Lessor and assumed to be in the amount of  
~~\$220,550.10.~~ <sup>11.46%</sup> \$203,033.33.

Base Term Rent: Semi-annual rentals payable on January 2 and July 2.

Debt Rate: <sup>11.46%</sup> ~~10-3/4%~~ (computed on the basis of a 360-day year of twelve consecutive 30-day months).

Debt Term: 14 years

Transaction Costs--Debt: \$50,000

Transaction Costs--Equity: Paid by Lessor

Interest on Investments;  
Investment Deficiency; and  
Interest payable pursuant to  
last paragraph of Paragraph 9  
of Participation Agreement: None